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10 Attorneys for Plaintiff
UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 KAWAUM MARQUEZ SCOTT,
17 NEKEYIA NECOLE WEATHERSPOON,
18 aka "Keey Bee,"

19 Defendants.

No. ED CR 13-116-VAP

GOVERNMENT'S MOTION IN LIMINE NO.
6: TO PRECLUDE DEFENDANT
WEATHERSPOON'S EXPERT TESTIMONY OF
NANCY KASER-BOYD, PHD

Hearing Date: May 19, 2014
Hearing Time: 10:00 a.m.
Location: Courtroom of the
Hon. VIRGINIA A.
PHILLIPS

21
22 Plaintiff United States of America, by and through its counsel
23 of record, the United States Attorney for the Central District of
24 California and Assistant United States Attorneys Thomas D. Stout and
25 Corey G. Lee, hereby moves in limine for an order precluding the
26 testimony of Nancy Kaser-Boyd, Ph.D.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Between October 2012, and December 2012, defendants Kawaum
4 Marquez Scott and Nekeyia Necole Weatherspoon ("defendant")
5 recruited the then-14-year-old child victim in this case to work for
6 them as a prostitute. They advertised her services through the
7 internet, instructed her to perform numerous sexual acts with
8 customers, and collected from the money customers paid her.

9 On April 24, 2014, defendant filed a notice of intent to call
10 Nancy Kaser-Boyd, Ph.D. as an expert witness at trial to testify
11 about Battered Woman Syndrome ("BWS") and its effect on defendant.
12 (CR 58.)¹ The government seeks to exclude Dr. Kaser-Boyd's testimony
13 as irrelevant and improper under the Federal Rules of Evidence.

14 **II. STATEMENT OF FACTS**

15 A summary of defendants' alleged conduct is set forth in the
16 government's motion in limine No. 1, and is hereby incorporated by
17 reference. The government will only discuss additional facts
18 specifically pertaining to this motion.

19 On April 24, 2014, defendant filed a notice of her intent to
20 call Dr. Kaser-Boyd as an expert witness. (Id.) In the notice,
21 defendant stated that Dr. Kaser-Boyd would testify about BWS and "her
22 examination and conclusions concerning her examination of the
23 defendant herein and whether or not defendant was suffering under the
24 'battered woman's syndrome' at the time of her commission of the
25 offenses herein and to such other matters which relate thereto."
26 (Id.) Dr. Kaser-Boyd's curriculum vitae outlining her expertise in

27 ¹ "CR" refers to the Clerk's Record in the district court and is
28 followed by the docket number.

1 BWS was attached to the notice. (Id.) Neither an examination report
2 nor an indication that defendant was even examined was included,
3 however.² (Id.)

4 **III. ARGUMENT**

5 **A. Expert Testimony About BWS in General is Improper and** 6 **Irrelevant.**

7 The Court should exclude the testimony of Dr. Kaser-Boyd because
8 it is improper, and otherwise irrelevant. Defendant is charged with
9 (1) one count of conspiring to engage in sex trafficking of a child,
10 in violation of 18 U.S.C. § 1594(c); (2) two counts of sex
11 trafficking of a child by force, fraud, or coercion, in violation of
12 18 U.S.C. §§ 1591(a)(1), (a)(2), (b)(1), (b)(2); and (3) three counts
13 of sex trafficking of a child, in violation of 18 U.S.C.
14 §§ 1591(a)(1), (a)(2), (b)(2). Only evidence that is relevant to the
15 elements of these offenses, or to a legal defense, therefore, is
16 admissible at trial. See Fed. R. Evid. 402. See also United States
17 v. Vallejo, 237 F.3d 1008, 1019 (9th Cir. 2001) ("expert testimony
18 must be both relevant and reliable").

19 Without an examination of defendant and a report of such
20 examination, Dr. Kaser-Boyd's testimony would consist of only the
21 theory of BWS in general. Thus, defendant cannot establish that such
22 testimony is relevant to any element or legal defense in this case.
23 Accordingly, Dr. Kaser-Boyd's testimony, will not "assist the trier
24

25 ² Pursuant to Fed. R. Crim. P. 16(b)(1)(C), on April 25, 2014,
26 the government requested, but did not receive to date a written
27 summary of Dr. Kaser-Boyd's testimony describing her opinions and the
28 bases and reasons for those opinions. Defendant, however, has since
then informed the government that she is awaiting the Court's order
on her request for appointment of an expert.

1 of fact to understand the evidence or to determine a fact in issue,"
2 Fed. R. Evid. 702, and must be excluded.

3 **B. A potential duress defense based on BWS should be excluded**
4 **as no prima facie showing of duress exists.**

5 BWS is arguably relevant to a legal defense of duress. If
6 defendant seeks to raise duress as a defense based on BWS or
7 otherwise, all such testimony, evidence, and mention relating to any
8 purported duress, however, should be excluded, because defendant is
9 not entitled to present a duress defense to the jury unless there is
10 a prima facie showing of duress in a pre-trial offer of proof.
11 United States v. Vasquez-Landaver, 527 F.3d 798, 802 (9th Cir. 2008);
12 see United States v. Moreno, 102 F.3d 994, 998 (9th Cir. 1996)
13 ("Evidence of duress is not relevant if the defendant fails to
14 present evidence of a prima facie case of the affirmative defense."
15 (citing Fed. R. Evid. 402)). Thus far, defendant has failed to make
16 a pre-trial prima facie showing of duress.

17 **C. Dr. Kaser-Boyd's Testimony Should Be Excluded As Unfairly**
18 **Misleading and Prejudicial**

19 Even if the Court were to conclude that the proffered testimony
20 is proper and has some minimal relevance, any such de minimis
21 probative value is substantially outweighed by the risk of unfair
22 prejudice and confusion of the issues. Fed. R. Evid. 403. Prejudice
23 is "unfair" when the evidence has "'an undue tendency to suggest
24 decision on an improper basis,'" such as "'an emotional one.'" See,
25 e.g., United States v. Gonzalez-Flores, 418 F.3d 1093, 1098 (9th Cir.
26 2005) (quoting Old Chief v. United States, 519 U.S. 172, 180 (1997));
27 United States v. McInnis, 976 F.2d 1226, 1231 (9th Cir. 1992)
28 (quoting United States v. Skillman, 922 F.2d 1370, 1373 (9th Cir.

1 1990)). Simply presenting testimony about BSW without establishing
2 evidence to the offense elements or to a legal defense would only
3 serve to elicit decisions on an emotional basis.

4 **D. Should the Court Allow Testimony About BWS in General, Any**
5 **Statements of Prohibited Hearsay, Improper Vouching, and**
6 **Improper Expert Statement of Mental State Should be**
7 **Excluded**

8 Should the Court allow Dr. Kaser-Boyd to testify about BWS in
9 general, any testimony related to prohibited hearsay statements, that
10 is, defendant's hearsay statements to Dr. Kaser-Boyd that are
11 unrelated to medical diagnosis or treatment, should be excluded.
12 Guam v. Ignacio, 10 F.3d 608, 613 (9th Cir. 1992) (explaining, with
13 emphasis, that "a child victim's statements about the identity of the
14 perpetrator are admissible under the medical treatment exception when
15 they are made for the purposes of medical diagnosis and treatment").
16 Beyond the hearsay prohibition, these statements should be excluded
17 if they constitute inappropriate vouching and an improper expert
18 opinion on a mental state element. See United States v. Candoli, 870
19 F.2d 496, 506 (9th Cir. 1989) ("An expert witness is not permitted to
20 testify specifically to a witness' credibility or to testify in such
21 a manner as to improperly buttress a witness' credibility." (emphasis
22 added)); United States v. Morales, 108 F.3d 1031, 1041 (9th Cir.
23 1997); Fed. R. Evid. 704(b).

24 **IV. CONCLUSION**

25 For the foregoing reasons, the government moves for an order
26 precluding the expert testimony of Dr. Kaser-Boyd.
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